

CORRESPONDENCE
FILE

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In re Applications of :
: MM DOCKET NO. 93-75
TRINITY BROADCASTING OF :
FLORIDA, INC. : File No. BRCT-911001LY
:
For Renewal of License of :
Station WHFT(TV) on :
Channel 45, Miami, Florida:
and :
:
GLENDALE BROADCASTING : File No. BPCT-911227KE
COMPANY :
:
For a Construction Permit :
for a New Commercial TV :
Station to operate on :
Channel 45, Miami, Florida:

ORIGINAL

Deposition of: BARRY L. MARCH

Taken by : LEWIS I. COHEN, ESQUIRE

Before : Alfred W. Kershaw, RPR
Official Court Reporter

Beginning : Friday, September 10, 1993
10:00 a.m.

Place : Hearing Room 221
Lancaster County Courthouse
Lancaster, Pennsylvania

COUNSEL PRESENT:

MULLIN, RHYNE, EMMONS & TOPEL
1000 Connecticut Avenue Suite 500
Washington, D.C., 20036
BY: NATHANIEL F. EMMONS, ESQUIRE

and

CHRISTOPHER A. HOLT, ESQUIRE
Appearing for Trinity Broadcasting
of Florida, Inc.

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4 Washington, D.C. 20036
5 BY: LEWIS I. COHEN, ESQUIRE
6 Appearing for Glendale Broadcasting
7 Company

8 JAMES W. SHOOK, ESQUIRE
9 Federal Communications Commission
10 Mass Media Bureau
11 Washington, D.C. 20554
12 Appearing for the FCC

13 ALLEN K. KRAUSE, ESQUIRE
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16 Lebanon, Pennsylvania 17042
17 Appearing for the Deponent,
18 Barry L. March
19
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16
17
18
19
20
21
22
23
24
25

INDEX TO WITNESSES

WITNESS	PAGE
BARRY L. MARCH	
BY MR. COHEN	6
BY MR. HOLT	92
BY MR. SHOOK	113

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX TO EXHIBITS

EXHIBIT	DESCRIPTION	MARKED
March 1	Subpoena	7
March 2	Affidavit	12
March 3	Letter	101
March 4	Document	103

- - -

1 COUNTY OF LANCASTER :

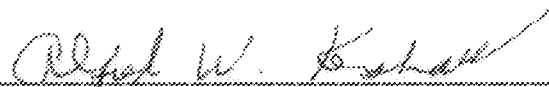
2 SS

3 COMMONWEALTH OF PENNSYLVANIA:

4 I, ALFRED W. KERSHAW, the undersigned
5 Commissioner, do hereby certify that there appeared
6 before me, BARRY L. MARCH, the witness, being
7 duly sworn to testify the truth, the whole truth, and
8 nothing but the truth, in answer to the oral questions
9 propounded to him by the attorneys for the respective
10 parties as set forth in the following deposition.

11 I further certify that before the taking of
12 said deposition, the above witness was duly sworn, that
13 the questions and answers were taken down
14 stenographically by said Alfred W. Kershaw, Official
15 Court Reporter, Lancaster, Pennsylvania, approved and
16 agreed to, and afterwards reduced to print by means of
17 computer-assisted transcription under the direction of
18 said Reporter.

19 In testimony whereof, I have hereunto
20 subscribed my hand this 28th day of September, 1993.

21
22 

23 Alfred W. Kershaw

24 Reporter-Commissioner
25

1 P R O C E E D I N G S

2
3 (Whereupon, at or about 10:00 a.m., the
4 following proceedings transpired:)

5
6 (Whereupon, it was stipulated that the
7 original of the deposition would be mailed to Mr.
8 March's attorney for reading and signing by the
9 witness; that the original would then be returned
10 to the Court Reporter for subsequent filing, with
11 two copies, to the FCC.)
12

13 BARRY L. MARCH, called as a witness,
14 being duly sworn or affirmed, was examined and
15 testified as follows:

16 EXAMINATION

17 BY MR. COHEN:

18 Q. Would you please identify yourself for
19 the record?

20 A. All right, my name is Barry L. March,
21 M-A-R-C-H, general manager at the Lebanon Valley
22 Quality Inn, which operates under the name of
23 Greater ^{Lebanon} Hotel Enterprises, Inc. ~~X~~ ^{MS}

24 MR. COHEN: I think, probably, it would
25 be good to have appearances of counsel. My name is

1 Lewis Cohen, and I am here today representing
2 Glendale Broadcasting Company.

3 MR. HOLT: My name is Christopher Holt.
4 I'm here representing Trinity Broadcasting of
5 Florida, Inc.

6 MR. EMMONS: Nathaniel Emmons, also
7 representing Trinity Broadcasting of Florida, Inc.

8 MR. SHOOK: James Shook representing
9 the Chief, Mass Media Bureau.

10 MR. KRAUSE: Allen Krause, representing
11 Mr. March.

12 BY MR. COHEN:

13 Q. State your address, Mr. March. If you
14 would, your residence address.

15 A. Residence is 2622 Pike Lane, Lancaster
16 Pa. 17603.

17 Q. And you have been subpoenaed to testify
18 here today, is that correct, sir?

19 A. Yes.

20 Q. Pursuant to the rules of the
21 Commission, the Federal Communications Commission,
22 Mr. Reporter, I hand you the subpoena duces tecum
23 which was served upon the witness.

24 (Whereupon, the Court Reporter marked
25 for identification as Deposition Exhibit March one,

1 a subpoena.)

2 BY MR. COHEN:

3 Q. Now, Mr. March, I and my colleagues --
4 Well, I'm going to ask you questions, and my
5 colleagues may ask you some questions.

6 And I want to first make clear to you,
7 sir, that if my questions are not absolutely
8 crystal clear in any way, please tell me so.

9 If my question is foggy, tell me. I'll
10 try to make it clear. But if there is anything
11 unclear about anything I ask you, please tell me.

12 If during the course of your deposition
13 it occurs to you that you want to modify, change,
14 add, subtract, complete any answer that you gave
15 earlier, I want to give you that opportunity to do
16 so, and just tell me.

17 I want you to have a hundred percent
18 opportunity to answer the questions the way you --
19 In the way it's best for you. Is that very clear?

20 A. Yes.

21 Q. Now, you have received, as you stated,
22 a subpoena duces tecum, correct?

23 A. There was noise here. I'm sorry.

24 Q. Sure. A subpoena duces tecum was
25 served upon you?

1 A. I was served a subpoena. I don't know
2 what other terminology.

3 Q. Let me show you the document that was
4 served on you. Do you mind if I read over your
5 shoulder?

6 A. No.

7 Q. Is that the document that was served
8 upon you?

9 A. Yes.

10 Q. Okay. And that document calls for you
11 to produce, and I quote, all books, papers, records
12 and documents pertaining to or relating to the
13 affidavit dated May 7, 1993, subscribed to by Barry
14 L. March, and submitted to the Federal
15 Communications Commission.

16 Have you brought any such documents
17 with you this morning?

18 A. I have not brought any documents with
19 me today that I had in my possession in the hotel.

20 Q. I'm sorry, I got distracted by this.
21 (Referring to a loudspeaker message.)

22 Let's wait, but I missed. I didn't
23 hear what you said.

24 A. Okay, I did not bring any documents
25 today that were solely in my possession at the

1 hotel.

2 Q. Why did you not?

3 A. I don't have any.

4 Q. So you have none of the documents that
5 are referenced in that subpoena that I just read
6 into the record? Is that what you are saying? You
7 have no such documents?

8 A. Not to my knowledge. I could not find
9 any. I combed my files. I could not produce any.

10 Q. And you looked?

11 A. Yes, I sure did.

12 Q. And so it's your testimony then that
13 there are no books, papers, records, or documents
14 pertaining to or relating to the affidavit that you
15 executed on May 7, 1993; is that correct?

16 A. That is not my statement.

17 Q. What is your statement?

18 A. My statement is that I could not
19 produce anything from my files. I am not saying
20 that the potential does not exist that there is
21 something there someplace.

22 Q. Well, tell me again why you couldn't
23 produce them?

24 A. I looked under Raystay. I looked under
25 communications. I looked under contract files, and

1 I could not produce them from those files.

2 Q. Sir, what you are telling me is you
3 looked in all the places that you think that
4 documents relating to the subpoena could be filed,
5 but you couldn't find any; is that correct?

6 A. That's correct.

7 Q. Did anyone assist you in that?

8 A. Two people.

9 Q. Who?

10 A. My existing secretary and my past
11 secretary.

12 Q. And when was that search conducted?

13 A. Oh, several weeks ago.

14 Q. After you received the subpoena?

15 A. Yes.

16 Q. And both of those secretaries assisted
17 you, but they were unable to help you find any
18 documents; is that your testimony?

19 A. Yes.

20 Q. Do you recall that you did have
21 documents that fell within the ambit of the
22 subpoena duces tecum but that you can't find them
23 now?

24 A. I don't recall any documents.

25 Q. You recall no documents?

1 A. I don't.

2 Q. Do you recall signing an affidavit that
3 was submitted to the Commission, the Federal
4 Communications Commission?

5 A. I remember signing something presented
6 to me by Mr. Holt, if that's the document in
7 question, yes.

8 Q. I see. Okay. What I would like to do
9 is to make a deposition exhibit two, the affidavit
10 of Barry L. March with a copying attachment,
11 Appendix A, Appendix B, Appendix C?

12 This document is entitled Affidavit of
13 Barry L. March.

14 It consists of five pages of text. It
15 consists of Appendix A, which is a title page, and
16 Appendix A has attached to it one, two, four pages.

17 Then Appendix B is a title page, and
18 that has attached to it three pages.

19 Appendix C is a title page, and that
20 has attached to it two pages.

21 And will you mark this, Mr. Reporter,
22 as March deposition exhibit two, please?

23 (Whereupon, the Court Reporter marked
24 for identification as Deposition Exhibit March two,
25 an affidavit.)

1 BY MR. COHEN:

2 Q. And, Mr. March, before we turn to
3 what's been marked as deposition exhibit two, I
4 want to ask you a few questions about the
5 subpoena -- excuse me, about your depositions here
6 this morning.

7 Other than your counsel, who is sitting
8 at your right, have you discussed this negotiation
9 with anybody in the world?

10 A. Before I get to that, can I make a
11 correction.

12 Q. Yes, you certainly can.

13 A. I did bring documents today.

14 Q. You did?

15 A. I just --

16 Q. That's okay. We're all human.

17 A. I gave Chris Holt a copy of all
18 outgoing telephone calls for the month of October,
19 1991.

20 Q. When did you give that to Mr. Holt?

21 A. Today, when I entered this room.

22 Q. I see. Do you happen to have another
23 copy for me, since I'm the one that subpoenaed
24 them?

25 A. No, I do not.

1 MR. HOLT: That assumes that they fall
2 within the ambit of your subpoena, which we made a
3 determination that they don't.

4 MR. COHEN: Are you representing the
5 witness?

6 MR. HOLT: No, I'm not.

7 MR. COHEN: You say: We made a
8 determination that they are not.

9 Are you suggesting that you made that
10 determination for Mr. March?

11 MR. HOLT: I'm not suggesting that at
12 all.

13 MR. COHEN: You handed the documents to
14 Mr. Holt this morning, is that correct?

15 THE WITNESS: That's correct.

16 MR. COHEN: And I take it you're not
17 willing to share those documents with me, is that
18 correct?

19 MR. HOLT: We will be pleased to share
20 the documents with you.

21 MR. COHEN: Very good.

22 MR. HOLT: My statement earlier was
23 merely meant to clarify that if we had believed
24 they were within the ambit, we would have provided
25 them to you.

1 MR. COHEN: As long as I am seeing the
2 documents.
3 Now, you provided these documents to
4 Mr. Holt this morning?
5 THE WITNESS: Yes.
6 BY MR. COHEN:
7 Q. And what are these documents?
8 A. They are outgoing telephone calls for
9 the month of October, 1991.
10 Q. And how did it come about that you
11 supplied those documents to Mr. Holt?
12 A. I understand that there was a possible
13 doubt that there was a phone call made to the hotel
14 during this particular month and this particular
15 year whereby I possibly responded to that phone
16 call.
17 Q. And when did you learn what you just
18 told me?
19 A. Approximately a week ago.
20 Q. And how did you learn it?
21 A. Through Mr. Holt.
22 Q. He telephoned you?
23 A. Yes -- Well, no, I telephoned him.
24 Q. You telephoned him?
25 A. Yes.

1 Q. And how did it come about that you
2 telephoned Mr. Holt?

3 A. To tell him I had no documents or
4 anything that I would be bringing to this
5 particular meeting.

6 Q. Now, was that a spontaneous call on
7 your part? Did you just decide to call Mr. Holt,
8 or had he contacted you earlier?

9 A. We talked earlier.

10 Q. You did? When did you speak earlier?
11 Give me your best recollection.

12 A. Three weeks.

13 Q. Three weeks. Now, what is today? My
14 mind is failing rapidly. Today's date is September
15 10th.

16 So that conversation was sometime in
17 August?

18 A. Possibly.

19 Q. Possibly. What is your best
20 recollection?

21 A. I said three weeks.

22 Q. Well, that would be in August then,
23 correct?

24 A. That's affirmative.

25 Q. Was that your first -- Did you have a

1 previous conversation with Mr. Holt in 1993 --
2 Strike that.

3 Did you have a previous conversation
4 with Mr. Holt since you were subpoenaed?

5 A. The only conversation I had was
6 concerning the telephone calls.

7 Q. So you were subpoenaed, and it states
8 on the subpoena what day you were subpoenaed. I
9 don't have that in front of me. Can you tell me
10 that for my own benefit?

11 A. I don't have my glasses.

12 Q. It's on the bottom.

13 A. August 2nd.

14 Q. August 2nd, okay.

15 Now, my question is this. Commencing
16 on August 2nd until today, how many conversations,
17 telephone conversations, have you had with Mr.
18 Holt?

19 A. Since August 2nd? The only one that
20 stands out is the one concerning the telephone
21 calls. The documentation that I brought with me
22 today, we discussed that.

23 And I produced that document willingly
24 for anybody in this room to have access to so I
25 don't have to produce it in the future or come back

1 at a future time to go through this again.

2 Q. All right, I understand.

3 Now, is it your testimony that since
4 the day you were subpoenaed you had one
5 conversation with Mr. Holt up until this? Or more
6 than one?

7 Take as much time as you need. I want
8 to make it clear, Mr. March. I want to be very
9 fair to you.

10 I want you to always take as much time
11 as you think you need to answer any question.
12 There is no rush.

13 A. I can't answer that. I don't know.

14 Q. You can't recall?

15 A. August is the busiest month -- July and
16 August -- of my year, and I --

17 Q. So you may have had more than one
18 conversation with Mr. Holt?

19 A. I would not say I didn't.

20 Q. You wouldn't say you didn't, but you
21 wouldn't say you did?

22 A. That's correct.

23 Q. You might have?

24 A. Possibly.

25 Q. Did you have any face-to-face meetings

1 with Mr. Holt from the day you were subpoenaed
2 until today?

3 A. No.

4 Q. Did you see Mr. Holt yesterday?

5 A. I never met the man until today.

6 Q. Did you talk with Mr. Holt yesterday?

7 A. No. Not to my knowledge, no.

8 Q. So you had one conversation, to the
9 best of your recollection, with Mr. Holt from the
10 day you were subpoenaed until today? That's your
11 best recollection?

12 A. Yes.

13 Q. And that conversation was initiated by
14 you or initiated by Mr. Holt?

15 A. That was initiated by me.

16 Q. By you. And what was your reason for
17 calling him?

18 A. My reason for calling him was to
19 basically tell him I don't have any documents that
20 I will be bringing today. I could not find -- I
21 don't have any.

22 Q. Okay.

23 A. And I would like to clarify under the
24 advice of my attorney, who is sitting to my right,
25 in the very beginning I did not want to get

1 involved or cooperate with any party whatsoever.

2 Q. But you did?

3 A. With the threat of being eventually
4 subpoenaed to do so, we agreed that it was probably
5 easier just to provide the information in question
6 and answer the questions at the time, rather than
7 go through that process.

8 Q. I understand. Now, so you called Mr.
9 Holt is what you are telling me?

10 A. On which day, sir?

11 Q. Sometime subsequent to the day you were
12 subpoenaed. This is a foundation for another
13 question. Isn't that accurate?

14 A. Are you referring to the time I called
15 him about the telephone papers?

16 Q. Correct.

17 A. Okay.

18 Q. That was a telephone conversation?

19 A. Yes, it was.

20 Q. Was there anyone on that telephone
21 conversation other than you and Mr. Holt, to your
22 knowledge?

23 A. No.

24 Q. Okay. It was a two-person
25 conversation?

1 A. Yes.

2 Q. And was that conversation on a speaker

3 phone, to your knowledge, or was it not on a

4 speaker phone?

5 A. Not speaker, to my knowledge.

6 Q. And give me your best recollection of

7 how long that conversation took.

8 A. Several minutes.

9 Q. I beg your pardon?

10 A. Several minutes.

11 Q. Okay. And give me your best

12 recollection, and I am just asking you for your

13 best recollection, of the substance of the

14 conversation?

15 A. The substance of the conversation was

16 that I did not have any documents that I would be

17 providing today. Pro, con, indifferent documents.

18 And Mr. Holt at that time said that

19 there may be a question about me returning a

20 telephone call the month of October, 1991, and it

21 would probably be in everyone's best interests if I

22 could provide those documents to answer the

23 question as to whether or not I returned a

24 telephone call in that particular month and year.

25 Q. Did Mr. Holt say anything else to you

1 that you can recall?

2 A. No.

3 Q. Did you talk about your then
4 forthcoming deposition, that is this morning's
5 deposition?

6 A. No.

7 Q. Did you talk about a document which is
8 attached to March deposition exhibit two which is
9 entitled Affidavit of Barry L. March, which you
10 have in front of you?

11 A. Yes, I had, sir.

12 Q. Did you talk at all about that
13 affidavit?

14 A. We never talked about this affidavit
15 after it was signed and sent in.

16 Q. You never have?

17 A. Not after it was signed and sent in.
18 No, sir.

19 Q. Have you talked about that affidavit
20 after it was signed and sent in with anybody in the
21 world?

22 A. My attorney.

23 Q. Anyone else?

24 A. No.

25 Q. Did you talk about --

1 A. Excuse me, my secretary was aware of
2 it.
3 Q. I understand.
4 A. But other than that, no.
5 Q. Are you aware that Mr. Holt is an
6 employee of a law firm? He's an associate or a
7 partner, I don't know which, in a law firm.
8 A. Yes.
9 Q. Have you ever talked with any other
10 person employed at that law firm?
11 A. Receptionist.
12 Q. Receptionist. Any other attorney?
13 A. Not to my knowledge.
14 Q. Not to your knowledge?
15 A. Not to my knowledge.
16 Q. So I take it then that you have spoken
17 to no one about your deposition here this morning
18 other than your own attorney?
19 A. That's correct.
20 Q. Now, do you know the gentleman sitting
21 at my right whose name is David Gardner?
22 A. He vaguely looks familiar.
23 Q. Well, he's a very handsome,
24 distinguished man, and that's said in jest, Mr.
25 March.

1 Would you give me your best
2 recollection of how he looks familiar to you?

3 A. I see people in the world, and they
4 vaguely look familiar.

5 Q. So you have seen him before then?

6 A. I didn't say that. I said he looked
7 familiar.

8 Q. He looks familiar, but you haven't seen
9 him?

10 A. I didn't say that.

11 Q. Tell me what you are telling me. I
12 want you to go home. I don't want to play games.

13 A. Did you ever go out on the street and
14 say: Excuse me, don't I know you?

15 And then they say I'm from Utah. I
16 just came in town.

17 You never saw them in your life but yet
18 you would have sworn you would have saw them.
19 That's the kind of vagueness I have.

20 Q. Can you recall at any specific time
21 seeing David Gardner?

22 A. Not with certainty, no.

23 Q. Can you recall it with uncertainty but
24 just recall it generally?

25 A. No. I use the word vague in a very

1 powerful form.

2 Q. So am I correct you may have seen him
3 before; you may not have seen him before? Is that
4 an accurate statement?

5 A. It is possible. One of the reasons I
6 feel that I may have known him is I ran into him in
7 the restroom, ran into him twice downstairs, ran
8 into him at the coffee shop, ran into him at the
9 elevator first floor, and ran into him at this
10 room.

11 That's five times in a day. That may
12 have emphasized the fact that I maybe I ran into
13 this guy before, running into him five or six times
14 within the course of five minutes here in this
15 building today.

16 Q. Of course. I understand that, and I
17 appreciate that. I was talking about prior to this
18 morning, and if my question wasn't clear I would
19 like to ask it to you again.

20 A. I'm saying sitting here looking at him
21 today, now at this hour, he vaguely looks like I
22 may have seen him, but that may have been because
23 of the sequence of seeing him in this building
24 five, six times, today.

25 Q. Do you think you might have seen him at